

1 and everybody else, they like to pay less  
2 rather than more; they would rather have a  
3 lower price if they could negotiate?

4       A       If that increases your margin you  
5 are usually motivated to have a lower  
6 acquisition cost.

7       Q       We agree again. And even with the  
8 NFL Network when Comcast negotiated with the  
9 NFL Network it tried to limit the price that  
10 it would have to pay the NFL Network for its  
11 programming, right?

12       A       I was being pretty aggressive.

13       Q       Do you remember that the contract  
14 - you can just tell me if you don't know and  
15 I will move on - had a surcharge limit in it,  
16 the '04 contract had a limit -

17       A       I thought you were talking about  
18 the rights acquisition.

19       Q       No, sir, I'm talking about the  
20 agreement Comcast had to distribute the NFL  
21 Network and pay them license fees. Do you  
22 know that the contract had some limits in it

1 that Comcast wanted on how big a price  
2 increase the NFL Network could charge?

3       A       As I said before, I know Mr.  
4 Roberts was interested in caps on pricing, but  
5 I don't know whether it found its way into the  
6 contract or not.

7       Q       Okay, and I think as you just said  
8 there is nothing wrong with a cable operator  
9 and any company in America that operates on  
10 margin wanting to try to keep as low as it can  
11 the prices it has to pay for the products it  
12 is acquiring.

13       A       Nothing wrong with an abstraction.  
14 If you fail to get product then it's a  
15 problem.

16       Q       And in this slide we are looking  
17 at, just to be clear, there is no reference  
18 that this is any kind of an antitrust problem  
19 for Comcast to be interested in controlling  
20 its sports pricing, is there?

21       A       No, like I said, the issue without  
22 an antitrust issue, the issue was, in this

1 slide, the issue was whether they would end up  
2 with programming that would make it an  
3 attractive network.

4           One reason that issue was front  
5 and center was that the principal rights they  
6 had acquired for this network up to this point  
7 in time were from the National Hockey League,  
8 which had shut down for the season, and was  
9 coming out of a shut down season. And they  
10 had gotten their rights sort of on the rebound  
11 from a season-long shutdown. And our people  
12 were not satisfied that in the future they  
13 would be prepared to go after programming in  
14 a way that would make this a first class  
15 effort if we were going to have this joint  
16 venture. It was an issue.

17       Q       Right, and that issue was, maybe  
18 they wouldn't want to pay enough?

19       A       And maybe we end up with a lot of  
20 video poker or some other thing that I'm not  
21 interested in being associated with.

22       Q       So this slide, this issue that is

1 being raised, has a reason why Comcast  
2 shouldn't get the deal potentially is that  
3 they are too much of a penny pincher in terms  
4 of not wanting to pay high prices for sports  
5 programming?

6       A       It's what I said in my deposition  
7 that you just read. We concluded that it was  
8 a potential misalignment of interests in a  
9 number of areas.

10       Q       Okay.

11       A       And that's what the slide says,  
12 potential misalignment of NFL and Comcast's  
13 strategic objectives.

14       Q       And I think we are in agreement  
15 again on that. You can close that side.

16               Now let me cover - I think I only  
17 have one or two other areas, Mr. Tagliabue.  
18 Prior to 2007, prior to your conversation with  
19 Mr. Roberts that you talked about, the January  
20 27 conversation - so 2006, 2005, 2004 -  
21 Comcast had done nothing to hurt you in your  
22 distribution with other cable companies;

1 correct?

2           A       Nothing that I'm aware of.

3           Q       Right. In fact, during that time  
4 period they were out there distributing the  
5 NFL Network and lots of the other cable  
6 companies were not; isn't that true?

7           A       I'll take your word for it. I  
8 couldn't be specific as to who was being  
9 positive in terms of distribution. We had  
10 some people distributing and other people not  
11 before we put the games on there, but I  
12 couldn't be specific. I assume they were  
13 being positive because they had the VOD deal  
14 so that was an incentive for them to be  
15 positive.

16           MR. CARROLL: Your Honor, may I  
17 show one more exhibit that, again, is already  
18 in evidence, Comcast Exhibit No. 307? I have  
19 extra copies that I can give you if it's  
20 easier.

21           JUDGE SIPPEL: What are you going  
22 to use it for?

1           MR. CARROLL:    I need to ask non -  
2 won't invade highly confidential issue.  It's  
3 only going to be on this issue of  
4 distribution.

5           JUDGE SIPPEL:   Distribution?  
6 Okay.

7           MR. CARROLL:    Okay, thank you.

8           JUDGE SIPPEL:   You may approach  
9 the witness, and see if Mr. Phillips -

10          MR. CARROLL:    Oh, I'll make sure  
11 Mr. Phillips is all right.

12                   (Whereupon the aforementioned  
13 document was marked for  
14 identification as Comcast Exhibit  
15 No. 307.)

16          JUDGE SIPPEL:   This was  
17 previously received in evidence as Comcast  
18 Exhibit 307.  This was used on the cross-  
19 examination of who?  Mr. Hawkins?

20          MR. CARROLL:    You know, Your  
21 Honor, the days are starting to blur for me.  
22 I think it was probably Hawkins, yes.  I think

1 you're right.

2 BY MR. CARROLL:

3 Q And the first page of this  
4 indicates, am I correct, Mr. Tagliabue, that  
5 this is the NFL Network update that was given  
6 at an annual meeting of the owners March 26th,  
7 2007, in Phoenix, Arizona; is that right?

8 A It says what it says. I had left  
9 the League seven months earlier, so I don't  
10 know what it is other than by looking at it.  
11 Whatever it is, it is.

12 Q Ah, good point. Let me just see  
13 if we can use this - and I understand you  
14 would have been gone; I have one for the prior  
15 year - but for speed let me see if we can  
16 proceed this way.

17 If you turn to page four of this  
18 exhibit, it's a virtuous document, it looks to  
19 be simple. It's all in the eye of the  
20 beholder.

21 A Page four?

22 Q Page four, subscriber outlook at

1 the top; correct? Is that the heading?

2 A Yes.

3 Q All right, I just want to use this  
4 as a reference point. We are not going to use  
5 any of the numeric figures you see here except  
6 the zeroes.

7 Now do you see Comcast is listed  
8 there as a healthy distribution of  
9 subscribers, millions of subscribers?

10 A It says, Comcast, 7,922,000.

11 Q And there is the number.

12 A Estimated as of March '07.

13 Q And then we have Time Warner zero,  
14 Charter zero, Cablevision zero, and MediaCom  
15 zero, okay.

16 Very simple question: you have no  
17 reason to think that Comcast was out there  
18 distributing to eight million subsidiaries and  
19 doing anything to prevent these other cable  
20 companies from distributing the network,  
21 correct, during this time period?

22 A I was gone.



1           Q       No, this is referring back though  
2 to the earlier years, in the 2006 year.

3           A       It says estimated as of March,  
4 2007. I was gone.

5           Q       Do you remember -

6           A       I'm in Israel in March of 2007.

7           Q       All right. Do you remember - I  
8 can show you the one for the earlier year.  
9 Let me do it this way. Do you have any reason  
10 to dispute that in '05 and '06 before there  
11 was any tiering issue, Comcast was out there  
12 distributing the network to eight million  
13 subscribers, and Time Warner, Charter,  
14 Cablevision, and MediaCom were all about zero.

15          A       I don't have any knowledge.

16          Q       Okay. You are not alleging in  
17 anyway that during that time period while  
18 Comcast is distributing to eight million, and  
19 these other cable companies are not  
20 distributing it, that Comcast was doing  
21 anything to interfere with your distribution  
22 during that period, correct?

1           A       I don't believe it's a part of any  
2 testimony I have given in this case.

3           Q       All right. And that would make no  
4 sense, would it? You'd have Comcast carrying  
5 to eight million people, it'd be the stupidest  
6 collusion in the history of the world, right,  
7 to have somebody carrying it to all these  
8 people and these other people not distributing  
9 it; it would make no sense?

10          A       If they were carrying it to eight  
11 and could carry it to 35, that'd be one issue.  
12 If they were carrying it to eight and could  
13 carry it to nine, that'd be another issue. I  
14 don't know what the total potential was, and  
15 I assume that's households. I don't know how  
16 many households they were in at that time.

17          Q       You have no reason to dispute that  
18 if they are carrying it to eight, and you are  
19 telling the owners about it, they are  
20 fulfilling their rights under the contract at  
21 the time and they are doing what they are  
22 supposed to?

1           A       I wasn't in Arizona. Wasn't at  
2 the meeting; don't know anything about the  
3 document.

4           Q       And would it be fair to say that  
5 in the period prior to when you leave as  
6 commissioner, when you step down, prior to  
7 there being any tiering dispute, that during  
8 that period as far as you knew Comcast was  
9 doing a good job trying to market the NFL  
10 Network?

11          A       From January 27th, of 2006, through  
12 August 31st, I'm not aware of any assertion of  
13 any problems relative to Comcast's  
14 distribution.

15          Q       And for the prior years, 2004,  
16 2005, would you agree with me that in fact  
17 Comcast was an industry leader, and was doing  
18 a good job of aggressively marketing the NFL  
19 Network?

20          A       Yes, we did have some issues with  
21 some of their advertising in certain markets  
22 in the fall of 2005 in terms of the scope of

1 the service that was being provided under the  
2 DOD package. But I don't think it rises to  
3 the level that you were talking about.

4 Q So generally you would agree  
5 during that period they were doing a good job  
6 of marketing the NFL Network?

7 A Subject to some disputes we had -  
8 JUDGE SIPPEL: I'm going to have  
9 to ask you to keep your voice up.

10 THE WITNESS: Oh, I'm sorry.  
11 During that period that he is talking about,  
12 the fall of '05 into early '06, when we were  
13 negotiating, I'm not aware that there were any  
14 issues of Comcast doing anything to deter the  
15 distribution of the NFL Network.

16 I am aware that we had certain  
17 issues about how they were advertising a  
18 certain service, and what our people thought  
19 was a somewhat misleading fashion in certain  
20 markets. But that does not rise to the level  
21 that counsel seems to be referring to.

22 BY MR. CARROLL:

1           Q       And going back to even 2004, at  
2 the start of the contract relationship, would  
3 you agree with me that even going back to '04  
4 Comcast was doing a good job then of  
5 aggressively marketing the network?

6           A       Yes, that's when we were working  
7 together.

8           Q       Okay, and I think we are almost  
9 done.

10                   The eight-game package, His Honor  
11 asked some questions about the eight-game  
12 package I think during the direct testimony.  
13 And how they were created and what they  
14 consisted of. Let me just ask this, before  
15 the eight-game package was created, am I  
16 correct that the eight games were available on  
17 network television?

18           A       Before this eight-game package was  
19 created, either four or six of the games,  
20 probably, four or six games, could have been  
21 different games, but either four or six NFL  
22 games were carried on Saturday afternoons in

1 packages that were being televised by CBS and  
2 Fox.

3           We negotiated with CBS and Fox to  
4 put an end to those Saturday afternoon  
5 telecasts, and those four or six games - it  
6 would vary in any given year - were part of  
7 the eight games that went onto the NFL Network  
8 on Thursday nights and Saturday nights.

9           Q     Okay, so it's either four or six,  
10 you are not sure which?

11          A     It varied from year to year  
12 because of the revision of the federal  
13 statute.

14          Q     Okay, let me do it this way.  
15 Before there is any eight-game package, the  
16 games are all being broadcast on network TV,  
17 and also being carried on DIRECTV as part of  
18 the Sunday Ticket. And then ESPN also had  
19 rights to some games; is that right?

20          A     These eight games?

21          Q     No, before the eight games, there  
22 was still football, right? The NFL had

1 football, and it had all these football games.

2           A       Yes.

3           Q       And before the eight games were  
4 created, all those games were being divided up  
5 among broadcast television operators like CBS  
6 and Fox. DIRECTV had its Sunday Ticket  
7 package. And I think ESPN had some rights to  
8 some games back then too, is that right?

9           A       Yes.

10          Q       Okay, now when you got the idea to  
11 create the eight games, did you negotiate with  
12 CBS and Fox to take some of the games they  
13 had, reduce their games, and use that to build  
14 this new eight-game package?

15          A       Yes, that's what I said before.  
16 They had the rights to carry a limited number  
17 of games in December, on a Saturday afternoon,  
18 in their prior contracts, and in the contracts  
19 we signed with them I believe in November of  
20 2004. We deleted that provision and limited  
21 their telecasts to basically to Sunday and to  
22 Thanksgiving.

1           Q       Okay, and when the game rights  
2 belonged to CBS and Fox, I and other -  
3 anybody else in the country could watch those  
4 games for free by turning on my television set  
5 on a Saturday or Sunday, right?

6           A       On a Saturday.

7           Q       On a Saturday. And then as a  
8 result of the eight-game package, I couldn't -  
9 as a consumer I couldn't any longer see them  
10 for free, they would now be part of this  
11 network and the network would be charging  
12 somebody for the games, correct?

13          A       Yes.

14          Q       Okay, and as a result of doing  
15 that the NFL hoped that it would be able to  
16 increase its revenues, among other things, to  
17 increase its revenues for these games;  
18 correct?

19          A       Among other things, yes.

20                 MR. CARROLL:   Mr. Tagliabue, I  
21 thank you for your time today. Those are all  
22 our questions at this time.



1 JUDGE SIPPEL: Mr. Schonman, do  
2 you have any questions before we go to  
3 redirect?

4 MR. SCHONMAN: I do.

5 CROSS-EXAMINATION BY COUNSEL FOR THE FCC

6 BY MR. SCHONMAN:

7 Q Good morning, sir. My name is  
8 Gary Schonman. I'm co-counsel for the FCC's  
9 enforcement bureau. I just have a few  
10 questions for you.

11 If you would direct your attention  
12 to Enterprise Exhibit No. 214, which is your  
13 direct written testimony.

14 A Yes.

15 Q Specifically paragraph three, the  
16 very last line of paragraph three you state,  
17 I heard Mr. Roberts say similar things on  
18 prior occasions. And I - is it correct that  
19 on prior occasions you mean prior to the  
20 January 27th, 2006 telephone call?

21 A Yes.

22 Q What were those prior occasions?

1           A       They were meetings or telephone  
2 conversations where we were discussing  
3 negotiating where to put this eight-game  
4 package. And one alternative was Comcast,  
5 what became known as the Versus network. One  
6 alternative was the NFL Network. Another  
7 alternative was a venture with NBC Universal  
8 that would have involved the USA Cable  
9 network. Another alternative was with  
10 NewsCorp, Fox, that would have involved a new  
11 sports cable network, but that media company  
12 would have launched with the NFL's eight-game  
13 package.

14                   And there were other alternatives  
15 as well. But each of those alternatives we  
16 had talked about different distribution  
17 scenarios, different distribution dynamics.  
18 And as you might appreciate with a company  
19 such as NewsCorp, which has Fox news and Fox  
20 cable channels and NBC Universal, which has  
21 the USA Network, they are distributing  
22 multiple cable channels through the cable

1 MSOs. So they have one point of view about  
2 how effective they might be in getting  
3 distribution. Comcast presented a different  
4 set of considerations.

5           So we had lots of different  
6 assumptions about how hard or easy it would be  
7 to distribute the network with different  
8 partners. And it was in that context with  
9 Comcast that we had these discussions with Mr.  
10 Roberts in which he would say, if you come  
11 with us, if you do a deal with us, then we  
12 have relationships with other MSOs in the  
13 cable industry that can be helpful in  
14 distribution, and if you don't do a deal with  
15 us, you wouldn't be so well off with those  
16 other cable companies; they might not be so  
17 helpful.

18           It was in that context where he  
19 was saying we can help or we can hurt.

20           Q     Did you take those statements as  
21 threats each time?

22           A     I guess you could put it that way,

1 yes.

2 Q Well, how would you put it?

3 A I don't - I don't - I knew what he  
4 was saying. He was saying it could be  
5 hurtful.

6 Q In what way?

7 A In losing whatever leverage they  
8 had, relationships they had with others in the  
9 cable industry to favor their network and not  
10 do business with our network, or do business  
11 on different terms.

12 Q Did those statements disturb you  
13 at all?

14 A Yes, I reported them to the  
15 owners. We had discussions of that with the  
16 owners.

17 Q What did you tell the owners?

18 A I told them just what I told you.  
19 If we do a deal with certain people we will  
20 have certain distribution dynamics. If we do  
21 a deal with Comcast we will have other  
22 distribution dynamics. If we don't do a deal

1 with Comcast, there are still other  
2 distribution dynamics. And we got to be  
3 realistic and understand that in some  
4 scenarios it's going to be tough and  
5 complicated, and in some scenarios we might  
6 have a better relationship.

7       Q       I don't want to mischaracterize  
8 your testimony from earlier, but if I recall  
9 correctly you described Mr. Roberts as a tough  
10 negotiator?

11       A       Yes, a lot of people are tough  
12 negotiators. Most people are tough  
13 negotiators.

14       Q       And he was one of them?

15       A       Yes.

16       Q       Is there any reason to believe  
17 that the statements that we're referring to  
18 that he made in his conversations were just  
19 not tough negotiating, as opposed to a threat?

20       A       It was part tough negotiating, and  
21 it was part letting us know that the cable  
22 industry companies talk to each other, and

1 they would talk about distribution of the NFL  
2 Network.

3       Q       From your dealings with Mr.  
4 Roberts and other cable companies, was that  
5 business as usual, those kinds of discussions?

6       A       You know I'm not inside the cable  
7 industry. I know that industries that have  
8 legitimate reasons to cooperate coordinate in  
9 certain areas, sometimes take advantage of  
10 those opportunities.

11               But in the context, as I said, I  
12 put it in here as a backdrop, it's more in the  
13 course of the negotiation, I knew that he was  
14 not telling me oh happy day. But I think what  
15 differentiated the last conversation was that  
16 he was being more aggressive, because he was  
17 trying to get me to change my mind. And it  
18 was against the backdrop of the earlier  
19 statements that I understood what was at stake  
20 here. They were going to have - the key thing  
21 was the references to the cable industry,  
22 whatever he meant, and the fact that there are

1 going to be complicated relationships because  
2 we are not going to be dealing with them just  
3 as a distributor within an MSO, it's going to  
4 be a distributor with an MSO that also  
5 happened to own a competitive network. Those  
6 were the things that I thought structurally  
7 were different here.

8           Q       What I'm trying to understand is  
9 your use of the word, threat, or warning, or  
10 why you characterize these comments as -

11          A       Well, I'm trying to stay away from  
12 characterization. I didn't characterize it as  
13 a threat. Counsel has been characterizing it  
14 as a threat. If you say is it a oh happy day  
15 or is it a threat, it's more of a threat. But  
16 I tried to stick with the facts here in my  
17 testimony, and it's up to the lawyers to  
18 characterize it.

19          Q       You characterized it though as a  
20 warning.

21          A       Yes, it was a warning, threat,  
22 heads up. He was telling me life was going to

1 get complicated, and we were going to have to  
2 deal with things that we didn't have to deal  
3 with before. It was not going to be business  
4 as usual in the cable industry.

5 Q Did you ever hear him make these  
6 references to anyone else?

7 A You mean the - I don't know who is  
8 the anyone else?

9 Q Well, you say in your direct  
10 written testimony, I heard Mr. Roberts say  
11 similar things on prior occasions. Does that  
12 say similar things to you as well as to other  
13 people, or just to you?

14 A I think he said similar - he said  
15 them to me, but I think he said similar things  
16 to some of the owners in some of his  
17 conversations with them.

18 Q Why do you think that?

19 A Because they told me.

20 Q Who?

21 A Mr. Pratt.

22 Q Who is Mr. Pratt?



1           A       The owner of the New England  
2 Patriots who was a member of the broadcast  
3 committee.

4           Q       What did he relate to you?

5           A       Some of what I just said. I was  
6 making it clear that if we do a deal with them  
7 we will have one set of dynamics with the  
8 cable industry; if we don't do a deal with  
9 them we will have a different set of dynamics  
10 with the cable industry.

11          Q       What did you do with these types  
12 of comments? Did you consider them in the  
13 context of how we should deal with Comcast?

14          A       Yes, you always consider it,  
15 consider whether - it's a process - the way I  
16 analyze problems for opportunities - I'll lean  
17 forward so I get closer to the microphone - I  
18 think you have to be focused on your core  
19 interests. That's why this slide about  
20 misalignment of interests, and my statement in  
21 my deposition about misalignment of interest.  
22 That was - that's the way I look at problems